IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

MFA.No. 552 of 1990

OA.98/1990 of FOREST TRIBUNAL, PALAKKAD
.....

APPELLANT: APPLICANT

M/s PODDAR PLANTATIONS LIMITED
RIPON ESTATE, MEPPADI POST, SOUTH WAYANAD

BY ADV. SRI. V.R. VENKITAKRISHNAN (SR ADVOCATE)
SRI. E.R.VENKATESWARAN
SRI.P.N.MOHANAN

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA REPRESENTED BY THE
CHIEF SECRETARY TO THE GOVERNMENT OF KERALA
SECRETARIAT, TRIVANDRUM
2. THE CUSTODIAN OF VESTED FORESTS AND
CONSERVATOR OF FORESTS, VESTED FORESTS,
KOZHIKODE

BY GOVT PLEADER SRI M.P. PRAKASH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 26/09/2007, ALONG WITH RP NO 890 OF 2003
THE COURT ON 19/10/2007 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & A.K. BASHEER, JJ.

M.F.A. No 552 of 1990 and R.P. No 890 of 2003

Dated: 19th October 2007

JUDGMENT

Radhakrishnan, J.

We have perused the order passed by the apex court in Civil Appeal Nos. 5202-5203 of 2005 directing this court to examine the acceptability of the rival stands and to give a definite finding as to the actual extent of land which had vested in the State as per the provisions of the Kerala Private Forest (Vesting and Assignment) Act, 1971.

2. This court while disposing of M.F.A. No 552 of 1990 vide judgment dated 31.03.2003 had elaborately considered the facts of the case, hence needs no further elaboration. Question raised before this court as well as before the Forest Tribunal was with regard to the extent of land liable to be exempted from the land vested in the State by virtue of the Vesting Act. This court ultimately held that the applicant is entitled to get exemption from vesting only plot Nos. 4 and 5 for its ancilliary purposes as shown in Annexure R1 (a) report by the Range Officer. Plot No 4 is having an extent of 3.6500 hectares and plot No.5 is having an extent of

0.6200 hectares. Annexure R1(a) report submitted by the Forest Range Officer, Meppadi indicated that so far as plot No. 4 is concerned,major portion falls within the estate and the entire area in plot No 5 also falls within the estate. Under such circumstances, this court disposed of the M.F.A declaring that plot Nos 4 and 5 in Annexure R1(a) report be exempted out of the lands vested in the State.

3. State and the Custodian of Vested Forests had taken up the stand that the above mentioned area also would fall within the area which had vested in the State on coming into force of the Kerala Private Forest (Vesting and Assignment) Act, 1971 (Act 24 of 1971) and were not liable to be exempted. Further State also had taken up the stand that even with regard to lands covered by plot Nos 4 and 5, applicant had no title since the same was vested in the State on 10.05.1971 and the applicant had come into picture only on 08.02.1973 when they had acquired right of the developed area of 607.6361 hectares by Ext P2 document. State maintained the stand that the applicant could lay claim only in respect of the above mentioned area covered by Ext P2 and the property for which they raised claim had vested in the State as early as on 10.05.1971, the date on which it was statutorily vested. Apex court felt that the real controversy is with regard to the extent of land vested in the State; whether it was 211.1628 hectares

of land as claimed by the applicant or 246.8235 hectares of land as stated by the State and therefore it was ordered that a definite finding be reached with regard to the actual extent of land vested in the State. Reference was also made to 419.6351 hectares of land mentioned in this court's judgment.

4. Applicant in O.A. No 98 of 1990 stated that the property which had vested in the State was 419.6350 hectare. Paragraph 2 of the application reads as follows:

> "2. For administrative convenience these estates are divided into 3 divisions, called Ripon Division, Nellimunda Division and Audatode Division. The total extent of these 3 divisions is 1027.2711 hectares. The predecessor company had filed the required returns to the Land Board under KLR Act 1963 as amended by Act of 1972. This return was submitted to the Land Board on 11th December 1972. An area of 419.6350 hectares was declared as private forest in that petition. The above area is mostly comprised of sparse shrubs and grass land. Some areas are also available with good stand of jungle trees, low lying swamps and rivulets in between."

In paragraph 3 of the application it is stated as follows:

> "The three divisions of the estate including the above declared forest area comprises of 1027.2711 hectares (in this 419.6350 hectares declared as forest is interspersed and contiguous to the

607.6361 hectares of planted area). Our developed area of 607.6361 hectares covers 451.3596 hectares of planted area ....."

Contention was raised by the applicant that 419.6350 hectares of land was undeveloped area as on 10.05.1971. The Tribunal elaborately considered the various contentions raised by the petitioner in its order dated 11.05.1990 which was affirmed by this court in M.F.A. No 552 of 1990 with slight modification. We have indicated that the applicant has purchased the property after the property was vested in the State.

5. We find that the total extent of land statutorily vested as private forest in the State was 246.8235 hectares and not 211.1628 hectare. Tribunal had also recorded a finding that what was vested was 246,8235 hectares and we also endorse that finding with regard to the extent of land vested. Since the right, title and interest of the land in question had fully vested in the State, it has attained the character of a reserve forest. Further it may be pointed out that the predecessor in interest of the applicant company had submitted ceiling return before the Land Board on 11.12.1972 stating that 419.6350 hectares was private forest (which takes in 246.8235 hectares) and the area was full of wild growth and jungle trees and neither the predecessor in interest nor the applicant company could

claim any right on those land whether it is 211.164 or 246.8235 hectares or 419.6350 hectares f land. On facts we have found only plot Nos 4 and 5 could be exempted out of 246.8635 hectares vested in the State. M.F A is disposed of above as directed by the apex court, upholding this court judgment. R.P. Filed by the State would stand dismissed.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
A.K. BASHEER
Judge

19/10/2007
en

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